

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. COMMODITY FUTURES TRADING
COMMISSION, *et al.*

Plaintiffs,

V.

TMTE, INC. a/k/a METALS.COM, CHASE
METALS, INC., CHASE METALS, LLC,
BARRICK CAPITAL, INC., LUCAS THOMAS
ERB a/k/a LUCAS ASHER a/k/a LUKE ASHER,
and SIMON BATASHVILI,

Defendants,

TOWER EQUITY, LLC,

Relief Defendant.

§ 87(2)(b)

CIVIL ACTION NO.
3:20-CV-2910-L

DECLARATION OF RECEIVER KELLY CRAWFORD

My name is Kelly M. Crawford, I am over 18 years of age, have never been convicted of any crime involving moral turpitude and I am fully competent to make this Declaration.

1. I am the Receiver appointed by this Court by an *Order Granting Plaintiffs' Emergency Ex Parte Motion for Statutory Restraining Order, Appointment of Receiver, and Other Equitable Relief (the "SRO")* entered on September 22, 2020 in the case styled above and I have personal knowledge of each of the facts stated below.

2. Because the *SRO* and the *Consent Order of Preliminary Injunction and Other Equitable Relief Against Defendants Lucas Thomas Erb a/k/a Lucas Asher a/k/a Luke Asher and Simon Batasyhili* entered on October 14, 2020 (the “*Consent Order*”)(the *SRO* and *Consent*

Order are referred to herein as the "Orders") define "Receivership Defendants" as including the affiliates or subsidiaries owned or controlled by the Defendants or Relief Defendants, it is critical for me as Receiver to know the identity of the entities owned or controlled by Asher and Batashvili. Accordingly, on October 14, 2020 I requested the attorney for Asher and Batashvili to provide me with a list of the entities they own or control. Attached hereto as **Exhibit 1** is a true and correct copy of my email to Defendants' counsel dated October 14, 2020.

3. On October 17, 2020, I sent another email to Defendants' counsel telling him I had not received a response to my request for a list of entities owned or controlled by Asher and Batashvili. Attached hereto as **Exhibit 2** is a true and correct copy of my email to Defendants' counsel dated October 17, 2020.

4. On October 21, 2020, I made my *third* request for the list of entities to Defendants' counsel. Attached hereto as **Exhibit 3** is a true and correct copy of my email to Defendants' counsel dated October 21, 2020.

5. On October 22, 2020, I made my *fourth* request for the list of entities to Defendants' counsel. Defendants' counsel responded with an email indicating he would "continue to urge my clients to compile the list of entities and comply with the Court's order." I replied, indicating "I have serious questions regarding your clients understanding the importance of complying with Judge Lindsay's Order." Attached hereto as **Exhibit 4** is a true and correct copy of the email exchange between Defendants' counsel and me.

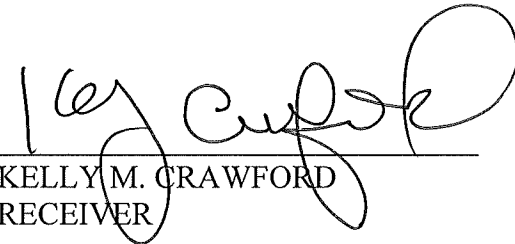
6. On October 23, 2020, counsel for Defendants was instructed that if the list was not provided to me by 5:00 p.m. I would proceed to file the Motion for Show Cause Order. Counsel for Defendants responded with an email indicating he intends to submit a list this weekend; has a request into his clients; has a partial list; and is scheduled to speak to his clients

later in the afternoon. I responded that based on my prior requests being ignored there is no reason to believe the list will be forthcoming and therefore I am filing the Motion for Show Cause Order. Attached hereto as **Exhibit 5** is a true and correct copy of the email exchange between my counsel Peter Lewis, Defendants' counsel and me.

7. Despite four requests from me and nine days, Defendants Asher and Batashvili still have not provided me a list of the entities they own or control. I can only interpret this delay as intentional defiance of this Court's Orders in an attempt to obstruct and interfere with my attempts to seize assets in the name of the entities the Defendants own or control. The delay in Defendants' responding with my request under the Order is damaging the receivership.

8. I declare under penalty of perjury that the foregoing is true and correct and is within my personal knowledge.

Dated: October 23, 2020



KELLY M. CRAWFORD
RECEIVER

Kelly Crawford

From: Kelly Crawford
Sent: Wednesday, October 14, 2020 10:32 AM
To: 'Arnold Spencer'
Cc: Buffa, JonMarc; Foelber, Richard P.
Subject: RE: Attorney Client Communications

Arnold,

With respect to the individual defendants' attorney client privilege, I need them to identify for me the attorneys who represented them individually and provide me a copy of the engagement agreements with such attorneys. We can then institute searching protocol that isolates communications between your clients and those attorneys to protect the privilege. With respect to receiverships, the majority approach of the courts is that the issue of whether the receiver controls the privilege of an individual in receivership must be determined on a case by case basis. For instance, in *Moore v. Eason (In re Bazemore)*, 216 B.R. 1020, 1024 (Bankr. S.D. Ga. 1988), the Court found that the trustee was entitled to attorney/client information regarding the individual's personal injury lawsuit because it was an asset of the estate. Therefore, as we isolate attorney client communications, if there are communications that relate to Receivership Assets, I reserve the right to challenge whether the attorney client privilege protects that communication.

In addition, pursuant to the terms of the SRO, please have your clients provide me with a list of the entities they own or control. Thank you.

Kelly Crawford PARTNER

Scheef & Stone, LLP

www.solidcounsel.com | 214.706.4213

Office: 214.706.4200 | Fax: 214.706.4242

500 North Akard Street, Suite 2700, Dallas, TX 75201



SCHEEF & STONE
SOLID COUNSEL

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From: Arnold Spencer <arnoldspencer75225@gmail.com>
Sent: Monday, October 12, 2020 4:55 PM
To: Kelly Crawford <kelly.crawford@solidcounsel.com>
Cc: Buffa, JonMarc <JBuffa@CFTC.gov>; Foelber, Richard P. <rfoelber@CFTC.gov>
Subject: Attorney Client Communications



Kelly-

As the Receiver take control of various accounts under the Receivership Order, I expect you will obtain access to a substantial amount of attorney-client communications. Some of those communications will involve privileges that are held by the corporate entities, and will transfer to the Receiver of those entities. But a number of the communications were made in my clients' individual capacity and they still maintain their interest in the privacy of those communications.

Can you share with me the plan for addressing this issue, whether it is through a taint team or through other processes? I am concerned that some the information that has already been transmitted by Graham Norris is arguably privileged. I do not plan on making an issue of the Norris emails, but I do want to ensure that everyone is sensitive to this issue and avoid it becoming a distraction from the central issues that everyone is trying to resolve.

Arnold A. Spencer
Managing Partner
www.aspencerlaw.com
214-385-8500



Kelly Crawford

From: Kelly Crawford
Sent: Saturday, October 17, 2020 9:43 AM
To: Arnold Spencer
Subject: metals receivership

Arnold,

I've received no response to my request that your clients comply with the Orders of the Court and provide me a list of the entities they own or control, and provide me access to the various cloud platforms they use. Both are critical.

Kelly Crawford PARTNER

Scheef & Stone, LLP

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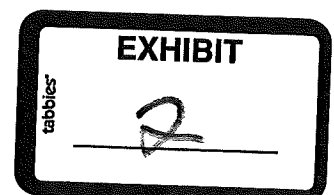
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Kelly Crawford

From: Kelly Crawford
Sent: Wednesday, October 21, 2020 8:06 PM
To: Arnold Spencer
Cc: Peter Lewis
Subject: Lucas and Simon

I need the list of entities from your clients.



Kelly Crawford

From: Kelly Crawford
Sent: Thursday, October 22, 2020 8:19 PM
To: Arnold Spencer
Cc: Peter Lewis; James Stafford
Subject: RE: Lucas and Simon

Arnold,

There is no reason for the delay in simply executing documents. Mr. Asher seems to believe Judge Lindsay's order is discretionary and he simply creates excuses without doing anything to comply with the Order. I don't buy that after more than a week they have been unable to come up with a list of entities they own or control. Also, I'm not sure what you are referring to regarding corporate entities in which your clients say they have no interest. I don't question your attempts to get your clients to comply but I have serious questions regarding your clients understanding the importance of complying with Judge Lindsay's Order.

Kelly Crawford PARTNER

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SCHEEF & STONE
SOLID COUNSEL

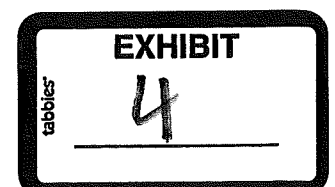
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From: Arnold Spencer <arnoldspencer75225@gmail.com>
Sent: Thursday, October 22, 2020 4:57 PM
To: Kelly Crawford <kelly.crawford@solidcounsel.com>
Cc: Peter Lewis <Peter.Lewis@solidcounsel.com>; James Stafford <James.Stafford@solidcounsel.com>
Subject: Re: Lucas and Simon

Kelly-

I had hoped to collect all of the consents and present them in a single, organized fashion. Instead, I will comply with your request and forward piecemeal as I receive them. I have questions about the draft consent form for Google, as Google is not a single entity, and is used colloquially in many different contexts.



Regarding the list of entities, my clients are taking actions to comply with the Court order, but do not have access to any of their paperwork, computers, contacts, or business resources, all of which limit their ability to respond quickly. They are working on your multiple requests, but have limited resources to respond. I previously contacted you with corporate entities that neither Batashvili or Asher have an interest, and have not heard back from you regarding these entities. I will continue to urge my clients to compile the list of entities and comply with the Court's order.

Arnold A. Spencer
Managing Partner
www.aspencerlaw.com
214-385-8500

On Oct 22, 2020, at 4:37 PM, Kelly Crawford <kelly.crawford@solidcounsel.com> wrote:

We're nearing the end of the day and I still don't have the signed consents or the list of entities that I asked for several days ago. I've been more than patient. Do I really have to file a show cause motion to get these?

Kelly Crawford PARTNER

Scheef & Stone, LLP

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Kelly Crawford

From: Kelly Crawford
Sent: Friday, October 23, 2020 4:37 PM
To: Arnold Spencer
Cc: Peter Lewis
Subject: RE: CFTC, et al. v. TMTE, Inc., et al.; Case No. 3:20-cv-02910-L in the United States District Court for the Northern District of Texas (Dallas Division)

There are no legitimate reasons Arnold.

Kelly Crawford PARTNER

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SCHEEF & STONE
SOLID COUNSEL

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From: Arnold Spencer <arnoldspencer75225@gmail.com>
Sent: Friday, October 23, 2020 4:35 PM
To: Kelly Crawford <kelly.crawford@solidcounsel.com>
Cc: Peter Lewis <Peter.Lewis@solidcounsel.com>
Subject: Re: CFTC, et al. v. TMTE, Inc., et al.; Case No. 3:20-cv-02910-L in the United States District Court for the Northern District of Texas (Dallas Division)

Respectfully, I have provided several reasons for the delay. I understand that we disagree whether the reasons merit the delay, but that is different than stating there are no reasons.

Arnold A. Spencer
Managing Partner
www.aspencerlaw.com
214-385-8500

 **SPENCER**
& Associates



On Oct 23, 2020, at 4:29 PM, Kelly Crawford <kelly.crawford@solidcounsel.com> wrote:

The list was due a long time ago Arnold and has consistently been promised to me after each of my 4 previous demands. I first requested this list 9 days ago. I'll reflect your statement in your motion, but I am proceeding to file the motion because I have no reason to believe a list will be forthcoming based upon the failure of your clients to submit a list to date. There has been no reason for the delay.

Kelly Crawford PARTNER

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From: Arnold Spencer <arnoldspencer75225@gmail.com>

Sent: Friday, October 23, 2020 4:23 PM

To: Peter Lewis <Peter.Lewis@solidcounsel.com>

Cc: Kelly Crawford <kelly.crawford@solidcounsel.com>

Subject: Re: CFTC, et al. v. TMTE, Inc., et al.; Case No. 3:20-cv-02910-L in the United States District Court for the Northern District of Texas (Dallas Division)

Importance: High

Peter-

As we discussed earlier today, I agreed to submit a list this weekend. I have a request into my clients, have a partial list already, and am scheduled to speak with them later this afternoon regarding this topic. If you feel the need to file a motion at 5:00pm, please note my offer to respond over the weekend in your motion.

Arnold A. Spencer
Managing Partner
www.aspencerlaw.com
214-385-8500

<image003.png>

On Oct 23, 2020, at 3:17 PM, Peter Lewis <Peter.Lewis@solidcounsel.com> wrote:

Arnold:

1. I talked to Kelly and if he does not have an entity list by 5 PM CST today from both your clients, I have been instructed to file a show cause motion. I am afraid far too many appeals for these lists have gone unheeded and too much time has passed while awaiting same.
2. A redlined version of the Administration Motion will get to you shortly.
3. Also attached are two additional Declarations attached that we need to get back asap today.
4. Finally, as for the MB G63, the Receiver wants Mr. Asher to do what he needs to do to connect with the landlord, get the key and get the G63 to the parking lot of 8383 Wilshire Blvd by noon PST, Monday, October 26, 2020. It's Mr. Asher's responsibility under the Court Orders to turn over the assets to the Receiver, not for the Receiver to hunt down assets.

Thank you for your attention to these matters.

Peter

Peter Lewis PARTNER

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<Declaration of Lucas Asher - Google - 4833-2534-5487 2.pdf><Declaration of Simon Batashvili - Google - 4852-0400-0463 2.pdf>